

1 IN THE UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA

4 BWS PROPERTIES, LLC, )  
5 Plaintiff, ) 1:24-cv-00029  
6 vs. ) Judge Christopher Steger  
7 AIRGAS USA, LLC, ) Non-Jury  
8 Defendant. )

Chattanooga, Tennessee  
May 1, 2025

11 DEPOSITION OF TRACY HARVEY

13 APPEARANCES:

14 FOR THE PLAINTIFF:

15 JESSICA M. WOLINSKY, ESQ.  
16 Miller & Martin PLLC  
17 832 Georgia Ave, SU 1200  
Chattanooga, TN 37402  
(423) 756-6600  
jessica.wolinsky@millermartin.com

FOR THE DEFENDANT:

PETER C. ROBISON, ESQ.  
Lewis Thomason  
424 Church Street, Su 2500  
PO Box 198615  
Nashville, TN 37219  
(615) 259-1366  
probison@lewisthomason.com

1 going back quite a ways.

2 A Decent amount. Yes, ma'am.

3 Q And do you know of a Ms. Jenny Nevans?

4 A Yes.

5 Q Just how do you know her?

6 A Well, she's the daughter of the owner of the --  
7 when it was Brooks Welding Supply. So, you know, I've  
8 known her since she was a child.

9 Q Long time.

10 A Yes, ma'am.

11 Q Have you ever been a plaintiff or defendant in any  
12 legal proceeding before this?

13 A No, ma'am.

14 Q And then other than traffic violations, have you  
15 been cited or convicted of any crime in the past 10  
16 years?

17 A I have not.

18 Q These are always the least fun ones to ask, but we  
19 have to, unfortunately.

20 A Sure.

21 Q Then my least favorite one, because it's always  
22 just strange to me, is, are you taking any medications or  
23 on any medications today that would impede, prohibit your  
24 built to testify truthfully today?

25 A No, ma'am.

1 understanding, because I've been to the property but I'm  
2 not -- I don't have as much familiarity, unfortunately.

3 A Sure.

4 Q When you say the back, are you talking about the  
5 warehouse?

6 A Yeah. This is the one that's back by the back  
7 docks.

8 Q Okay. And was that eventually fixed, or was that  
9 something that just was left unaddressed up until let's  
10 say, you know, 2023?

11 MR. ROBISON: Object to form. You can  
12 answer.

13 A Okay. It was never fixed. It's never worked,  
14 that I know of.

15 Q Were those restrooms, in 2005, clean?

16 A I don't have any idea. That was 20, you know, 20  
17 years ago. I do not remember what the bathrooms were on  
18 that in 2005.

19 Q Did the garage style doors, it may also be  
20 referred to as bay doors, in warehouse 1, in the 2005  
21 time period were those working?

22 A Sure. Yes.

23 Q Were they dented or damaged at that time?

24 A I mean, I don't know exactly in 2005. The doors  
25 had been there, I'm assuming, from the beginning. You

1 know, they're doors. They're opened and closed all the  
2 time. There's wear and tear on them. They would be  
3 dented. I mean, even back in the Brooks days, we had put  
4 new sections in the door sometimes when they could get  
5 damaged or, you know, become unusable. I mean, that's  
6 just something you have to do to garage doors as they go  
7 along if they're used a lot.

8 Q And then I believe on warehouse 1 as well --  
9 excuse me, building 1, there are also some what I'll call  
10 people size doors, just regular doors. In the 2005 time  
11 period, were those working, in terms of you could go in  
12 and out of them, close them?

13 A I think there's -- well, in the warehouse part I  
14 think there's three walk-through doors. One of those,  
15 that I know of, has never worked.

16 Q In looking at the image on Exhibit 2, where  
17 exactly is that door? I know you won't be able to see  
18 the door exactly, but on which side is that door located?

19 A So, on the left side of the building in the  
20 picture, you see the little carport -- or awning,  
21 whatever? It's under that.

22 Q Thank you. In the back offices or in the offices  
23 in building 1, at least in the 2022 to 2023 time period  
24 they were VCT tile. Was that the same in 2005?

25 A I don't think so. I think that was changed

1 the building 2?

2 A I mean, it's a repair shop. It's not the cleanest  
3 thing in the world. It's a welder repair shop. I'd  
4 describe it as a typical garage, a typical repair  
5 shop/garage type place.

6 Q Was the ceiling intact?

7 A As far as I remember. I don't remember  
8 specifically looking up at the ceiling. But as far as I  
9 know, yes.

10 Q And did the garage style or bay type doors, I  
11 believe there may be a couple on that building, did those  
12 work in 2005?

13 A Sure.

14 Q Is there a restroom in building 2?

15 A There is.

16 Q And was it working in 2005?

17 A Sure. Yes.

18 Q And other than, as you'd mentioned, it's a repair  
19 shop, it's not always the cleanest, was there other  
20 damage to building 2 -- any damage to building 2 that you  
21 can recall in 2005?

22 A So, I'll admit something here that's pretty funny.  
23 So, the outside edge of that building, where you drive up  
24 the ramp on the outside, there is three or four dents in  
25 that building, that I did that with a truck back in

1 probably 1990 or '95. I actually damaged that building  
2 there.

3 Q You left your mark.

4 A I did. I did. And those dents are still in it.  
5 That was back in the Brooks days.

6 Q Fantastic.

7 Just to confirm, in the 2005 time period, other  
8 than the mark that you left on the building, do you  
9 recall if there was any other damage to building 2?

10 A Not that I know of.

11 Q We'll skip building 3 just because thus far my  
12 understanding is that building 3 was not -- there were no  
13 people employed inside of building 3; is that correct?

14 A That's correct.

15 Q So we'll just move on to building 4, the gas  
16 house. I lost my place. I'm sorry.

17 Sticking with building 2 -- I was enjoying the  
18 "left your mark on the building" a little too much. I  
19 skipped ahead. Apologies.

20 Staying with building 2, so the repair shop, in  
21 the 2013 time period, do you recall if there was any  
22 damage to that building?

23 A Not that I recall, no.

24 Q And as of beginning of 2022 through, we'll say  
25 June 2022, do you recall -- or was there any damage to

1 A No, ma'am.

2 Q What do you recall about the condition of building  
3 4 in the 2005 time frame?

4 A Building 4 has always been the roughest building  
5 on the building [sic]. Building 4 was built in the late  
6 '30s. The concrete block part of that was built in the  
7 late '30s, long before Brooks Welding Supply existed.  
8 And that building is just -- it's always been the gas  
9 house, and there's not a lot of difference in it.

10 Q In 2005 were some of the windows damaged or  
11 broken?

12 A Honestly, back from even in the Brooks days I can  
13 remember that. And I don't know exactly specific windows  
14 or numbers of windows, or anything like that, but it was  
15 the gas house where we just stored cylinders in there.  
16 So, yeah, it was, it was rough. It was.

17 Q In looking at the back, looks like there's an L  
18 shape at the back of building 4. Do you see that?

19 A Yes, ma'am.

20 Q In the little section, I can point to it with my  
21 cursor, this section right here, smaller section, you see  
22 that?

23 A Yes, ma'am.

24 Q Is there an opening to get into the building right  
25 there?

1 Q And is this also a pictures of the warehouse?

2 A Same view, yeah. Just further back.

3 Q Do you see the two, I'm going to refer to them as  
4 boxes hanging from the ceiling?

5 A The gas heaters, yes, ma'am.

6 Q At one point while Airgas was still on the  
7 property, was one or more of those heaters damaged?

8 A Damaged by a person or something, or damaged from  
9 the failure of the heater?

10 Q I'll just represent to you that I believe there  
11 might have been a fire that occurred in one or more of  
12 those at one point. Can you tell me about that?

13 A They're extremely old gas heaters. They -- I  
14 don't know that they're original to the building, but  
15 they are extremely old. I know when I started in '85,  
16 that's the heaters that were there when I started in '85,  
17 and they're still there today, I suppose.

18 And that one heater had -- the wiring or something  
19 in it had shorted out and caught on fire years and years  
20 ago. And you just turned power off to it, turned the gas  
21 off to it, and there it was.

22 Q Was another one added in to compensate for that  
23 one being gone, or did Airgas just rely on the other one  
24 that was there?

25 A No. We were proud we had one heater.

1 Q Did Airgas inform anyone at BWS about the fire  
2 that occurred in one of those units?

3 MR. ROBISON: Object to form. You can  
4 answer.

5 A I have no idea. And I'm not positive that that  
6 occurred during the Airgas days.

7 Q Is this another picture of the warehouse from a  
8 different angle?

9 A Yes, ma'am.

10 Q And the same for this picture, is this a picture  
11 of the warehouse from a different angle?

12 A Yes, ma'am.

13 Q The pictures of the warehouse that we've looked at  
14 thus far, is that how the warehouse generally appeared in  
15 this early 2023 time period?

16 A Yes, ma'am.

17 Q Where is this?

18 A That's the main hallway through the offices part.  
19 It actually goes to the end and turns right.

20 Q Is this in building 1?

21 A Building 1, yes, ma'am.

22 Q Just to get kind of the lay of the land, is that  
23 first door there on the left, does that go into the  
24 conference room?

25 A No. The door on the right goes in the conference

1   probably 90 percent of the time they were outside,  
2   because that's what they loaded the trucks with, our  
3   delivery trucks with. We had an electric forklift that  
4   was inside the building.

5       Q    During Airgas's tenure on the property, was it  
6   aware of a forklift or other type of equipment, other  
7   than what you had mentioned, hitting building 2 earlier,  
8   either running into or hitting in any way building 1?

9                   MR. ROBISON: Object to form. You can  
10   answer.

11          A    I mean, I'm not in a specific time. I mean, it's  
12   an industrial situation. Things get bumped into. I  
13   don't think that anything was hit, ever hit hard enough  
14   to permanently damage something. You know, getting  
15   nitpicky on this, to the left of the forklifts -- and  
16   this is damage that I know of because I've been there for  
17   40 years. So getting to the left of the forklifts,  
18   between the bay door and the forklifts that you see in  
19   this picture right here, the whole bottom of that wall  
20   there is bent out at, you know, not a 90-degree angle but  
21   probably a 70-degree angle, at the whole bottom of that  
22   wall. That was there when I -- in 1985 it was like that.  
23   That's something that happened years ago. That was --  
24   you know, it's an industrial situation.

25       Q    And right above where you were actually just

## 1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE:

3 COUNTY OF HAMILTON:

4 I, Sheila D. Wilson, Licensed Court Reporter  
5 #268 and Notary Public, in and for the State of  
Tennessee, do hereby certify that the deposition of TRACY  
6 HARVEY was reported by me, and that the foregoing 129  
pages of the transcript is a true and accurate record to  
the best of my knowledge, skills, and ability.

7 I further certify that I am not related to  
8 nor an employee of counsel or any of the parties to the  
action, nor am I in any way financially interested in the  
outcome of this case.

9 I further certify that I am duly licensed by  
10 the Tennessee Board of Court Reporting, as evidenced by  
the LCR number and expiration date following my name  
below.

11 In witness whereof, I have hereunto set my  
hand this 27th day of May 2025.

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19 Sheila D. Wilson, LCR #268  
Expiration date: 6/30/2026.  
20 Notary Public Commission  
Expires: 1/17/2027.

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